

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT BLUEFIELD

UNITED STATES OF AMERICA

v.

CRIMINAL NO. 1:12-00158-1

TERRY TESTERMAN

MEMORANDUM OPINION AND ORDER

In Bluefield, on September 23, 2014, came the defendant, Terry Testerman, in person and by counsel, William S. Winfrey, II; came the United States by John L. File, Assistant United States Attorney; and came United States Probation Officer Brett Taylor, for a hearing on the petition to modify the defendant's term of supervised release.

The court informed the defendant of the alleged violations contained in the petition to modify the term of supervised release, filed on August 11, 2014. The court advised the defendant that, pursuant to Rule 32.1(b) of the Federal Rules of Criminal Procedure, he has the right to a hearing and assistance of counsel before his term of supervised release could be revoked or modified. Whereupon the defendant stipulated to the charges contained in the petition. Thereafter, the court found the charges were established by a preponderance of the evidence.

Having heard arguments of counsel, the court found that the Guideline imprisonment range for the revocation of supervised release upon such grounds was four to ten months. The court

further found that the Guideline ranges issued by the Sentencing Commission with respect to revocation of probation and supervised release are policy statements only and are not binding on the court. Thus, the court stated that the relevant statutory provision is 18 U.S.C. § 3583(e)(3), which provides a maximum term of imprisonment of twenty-four months. Neither party objected to the Guideline range and statutory penalty as determined by the court. The court found that there was sufficient information before the court on which to sentence defendant without updating the presentence investigation report.

After giving counsel for both parties and defendant an opportunity to speak regarding the matter of disposition, the court **ORDERED**, pursuant to the Sentencing Reform Act of 1984, that the defendant's term of supervised release be modified to include residence at Secor, Inc., a halfway house located in Lebanon, Virginia for a term of six (6) months.

The defendant is informed of his right to appeal the court's findings and the modification of his supervised release. The defendant is further informed that in order to initiate such an appeal, a Notice of Appeal must be filed in this court within fourteen (14) days. The defendant is advised that if he wishes to appeal and cannot afford to hire counsel to represent him on appeal, the court will appoint counsel for him. The defendant is

further advised that if he so requests, the Clerk of court will prepare and file a notice of appeal on his behalf.

The Clerk is directed to forward a copy of this Memorandum Opinion and Order to counsel of record, the United States Marshal for the Southern District of West Virginia, and the Probation Department of this court.

IT IS SO ORDERED this 30th day of September, 2014.

ENTER:

A handwritten signature in black ink, reading "David A. Faber", is written over a horizontal line.

David A. Faber
Senior United States District Judge